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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

WYATT B. and NOAH F. by their next friend Michelle McAllister; KYLIE R. and ALEC R. by their next friend Kathleen Megill Strek; UNIQUE L. by her next friend Annette Smith; SIMON S; BERNARD C.; NAOMI B.; and NORMAN N., individually and on behalf of all others similarly situated,

Plaintiffs,

v.

TINA KOTEK, Governor of Oregon in her official capacity; FAIRBORZ PAKSERESHT, Director, Oregon Department of Human Services in his official capacity; APRILLE FLINT-GERNER, Director, Child Welfare in her official capacity; and OREGON DEPARTMENT OF HUMAN SERVICES,

Defendants.

No. 6:19-cv-00556-AA

Plaintiffs' Nomination of Kevin Ryan to Serve as Neutral

Plaintiffs submit the filing pursuant to 4.2.2 of the Wyatt Settlement Agreement. *See* Dkt. 482, 7-8. Namely, the Settlement Agreement required the Parties to “cooperate in good faith to jointly select the Neutral by May 31, 2024. *Id.* If we were unable to reach agreement, each Party was to submit to the Court “a nominee by June 7, 2024, and the Court shall select the Neutral from those nominations...” *Id.* The agreement and any related directions from the Court were

silent regarding how we notified the Court. Thus, pursuant to 4.2.3 of the Settlement Agreement, Plaintiffs provided our Neutral selection with exhibits describing our nominee's qualifications and experience to the Court clerk, copying Defendants. See Cooper Declaration at Exhibit A.

Defendants instead filed their Neutral selection along with a declaration by Defense Counsel and Markowitz Herbold PC shareholder, Vivek Kothari. See Dkts. 493 and 494. Both Defendants' filings included inaccurate information about Plaintiffs diligent efforts to find and work with Defendants to select a Neutral. Plaintiffs submit this filing solely to respond to allegations of poor collaboration alleged in the state's nomination pleading (Plaintiffs "did not meaningfully consider the candidates proposed by defendants," "did not even interview some of the candidates on defendants' short list," and "offered a take it or leave it proposition." Dkt. 493 at 10) and raised by Mr. Kothari in his declaration. Dkt. 494. Namely, Mr. Kothari states, "Plaintiffs offered only one candidate, Kevin Ryan..." Dkt. 495 at ¶ 5. This is untrue. Plaintiffs provided Defendants with our top two candidates via email on May 29, 2024, over four hours before our scheduled conferral. Cooper Decl. Ex. B. A brief but more thorough description of the Neutral selection process is provided below.

On May 24, 2024, Defendants provided Plaintiffs with a list of twelve candidates for the Neutral Expert with no resumes or contact information. See Dkt. 495 Ex. 3 p. 8. Given the limited amount of time to fully vet each candidate, Plaintiffs repeatedly asked Defendants to identify their top candidates so that we could narrow our list of individuals to fully vet. See *id.* at 3-5. Defendants responded on May 28th, "Once we've narrowed down the list, we may be able to share that information." Cooper Decl. Ex. C. Plaintiffs researched and thoughtfully considered each candidate based on the limited information provided. Of the twelve candidates proffered by Defendants, Plaintiffs conducted thorough, hour-long interviews of three once their contact

information was shared: Tracy Malone, Julie Farber, and Karen Baynes-Dunning. Ultimately, Defendants provided us with their top five candidates after we conferred and merely twenty-nine hours before the Parties were to cooperate in good faith to jointly select the Neutral. Cooper Decl. Ex. D. In the few weeks between submitting the settlement agreement and the conferral deadline, Plaintiffs meaningfully tried to both vet our own candidates as well as those from Defendants while also simultaneously facing the limitations imposed by the Defendants to meaningfully confer on a neutral.

Finally, looking at the language of the Settlement Agreement itself, Plaintiffs note that the neutral nomination to this Court is an improper forum for airing perceived and inaccurate grievances with the neutral selection process. The selection process between the parties is completely irrelevant to the qualifications of either Party's candidate as contemplated by 4.2.3 of the Settlement Agreement. Indeed, whether Plaintiffs' Counsel found the candidates' contact information on their own, found their resumes online, and interviewed all twelve of Defendants' candidates has no bearing on either Ms. Farber or Mr. Ryan's ability to perform this critical job. Defendants' public filing of their nomination with false and arguably inflammatory allegations only undermines what should be a fair and neutral process to assist the Court in making its decision. Ultimately, both parties must turn our attention to the critical work of both notifying the class of the landmark Settlement Agreement and getting to work on implementing its terms.

Dated this 10th day of June, 2024

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